

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to) CC Docket No. 94-54
Commercial Mobile Radio Services)

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COMMENTS OF AMERITECH

Ameritech submits these comments in the Commission's Second Notice of Proposed Rulemaking ("Second NPRM") in In The Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 (rel. April 20, 1995). In general, Ameritech remains solidly supportive of the Commission's continued effort to establish a customer-focused, marketplace-driven structure for the emerging CMRS marketplace. Ameritech's initial comments will address several of the issues raised in the Second NPRM. These issues include:

- (1) whether the Commission should adopt any guidelines in connection with its conclusion that it is not necessary to impose a general interconnection requirement on all Commercial Mobile Radio Services ("CMRS") providers;
- (2) whether the Commission should refrain from taking any regulatory action with respect to roaming services between CMRS providers; and
- (3) whether the type of resale obligations imposed on cellular providers should be imposed on all CMRS providers and, if so, after what time period the obligation should end vis-à-vis facilities-based competitors.

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I. CMRS-To-CMRS Interconnection

In its Notice of Inquiry released on July 1, 1994, in this docket,¹ the Commission sought discussion on whether it would be in the public interest to impose a general interconnection obligation on all CMRS providers. Based on the earlier comments received in this docket, the Commission stated in the Second NPRM:

We seek to establish a framework under which the benefits of interconnection are realized primarily through private negotiations and arrangements. We are prompted to seek such a framework in part because we are cognizant that private discussions and transactions among carriers may provide a more suitable mechanism for distributing the costs and realizing the benefits associated with CMRS-to-CMRS interconnection than the regulatory process. We believe that the public interest considerations should play a role in guiding these carrier transactions, and we are at the same time confident that the technical and economic feasibility of such interconnection will be explored and defined through these private arrangements.²

Ameritech supports the Commission's conclusion that it is premature to impose a general interconnection obligation on CMRS providers. The industry is still developing and present market conditions suggest that there is no problem. In a competitive environment such as this, the Commission wisely elected to leave the development of actual interconnection arrangements to the evolving wireless services marketplace. Ultimately carriers will be incented by the competitive market to provide their services in the most user-friendly fashion.³

¹ Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service, Notice of Proposed Rulemaking and Notice of Inquiry, GEN Docket No. 93-252, 9 FCC Rcd 5409 (1994) ("Interconnection NOI").

² Second NPRM, ¶ 28.

³ Consistent with the Commission's conclusion about the developing nature of the industry and its belief that private arrangements are appropriate, the Commission should preempt the states from regulating CMRS interconnection at this time. State-imposed interconnection obligations at this time could render the Commission's decision to permit the industry to develop through private arrangements meaningless.

This position is also fully consistent with the Commission's earlier findings that "in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service ...".⁴ The Commission's continued reliance in general upon the operation of natural marketplace forces rather than artificial regulatory mechanisms is especially appropriate in the rapidly evolving CMRS arena under review in this proceeding.

For reasons similar to the ones articulated by the Commission in reaching the conclusion that it would be premature to mandate CMRS-to-CMRS interconnection, the Commission should proceed cautiously before imposing "guidelines" on interconnection in this Second NPRM.⁵ Guidelines could have a chilling effect on the ability of providers to negotiate the most economically and technically feasible arrangements. Such guidelines, if any were to ultimately be deemed necessary, would be better set at a later date after the industry is in less of a nascent state and/or if numerous interconnection problems ever arise.

The Commission indicated that it had three possible means by which it could enforce the statutory rights and obligations of Section 201 of the Act insofar as it relates to the provision of CMRS. These included: (1) a notice and comment rule making proceeding; (2) individual complaint cases pursuant to Section 208; and (3) other

⁴ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GEN Docket No. 93-252, 9 FCC Rcd 1411, 1478 (1994) ("Second Report and Order").

⁵ For example, the Commission acknowledged that the record in the Interconnection NOI provided "... an insufficient basis for proposing a general interstate interconnection obligation" which was "... due, at least in part, to the fact that the CMRS industry is undergoing rapid change in terms of technologies and facilities employed, rendering many of the inquiries contained in the Interconnection NOI speculative and any data provided in response to such inquiries unreliable as a basis for a rule making." Second NPRM, ¶ 29.

proceedings responding to the requests of CMRS providers for interconnection pursuant to Section 332(c)(1)(B).⁶ Ameritech submits that it would be appropriate at this point to address problems, if any, that arise through complaint proceedings brought pursuant to Section 208 and, if at some point it appears that it is necessary to conduct further proceedings relating to interconnection rules, to do so at that time. The complaint routines and procedures are both well-understood and currently funded, and serve precisely the purposes under consideration here.

If the Commission does choose to articulate guidelines now and determines to apply a market power analysis in determining whether to impose specific interconnection obligations, it should not articulate a standard whereby LEC investment and affiliation with a party alleged to be denying interconnection is an “important factor in assessing whether such denial of [interconnection] was motivated by an anticompetitive animus.”⁷ If the Commission were to state such intent to impose more stringent scrutiny on CMRS providers which are affiliated with LECs, it would have a stifling effect on those parties’ ability to mutually negotiate the most technically and economically feasible interconnection.⁸ It would also skew the negotiation process itself and encourage CMRS providers unaffiliated with a LEC to make less than reasonable interconnection requests. Instead, the emphasis, if the Commission determines to suggest guidelines, should be on available market alternatives. In any

⁶ Second NPRM, ¶ 40.

⁷ *Id.*, ¶ 43.

⁸ This is especially appropriate where, as the Commission has noted, “the record supports a finding that all CMRS providers, other than cellular licenses, currently lack market power.” Second Report and Order, at 1467.

event, the Commission's focus should continue to be on how to achieve regulatory parity among CMRS providers.

II. Roaming

The Commission has properly concluded that it should not take any regulatory action at this time with respect to mandating roaming agreements between providers.⁹ Ameritech also agrees that before the Commission fashions any regulatory structure to support roaming, the technical issues should be extensively studied and analyzed. However, to the extent possible, it would be more appropriate for the industry to continue to work out solutions to roaming. In the cellular industry, the industry has been very successful in developing and implementing the IS-41 standards and the network architecture necessary to provide roaming services. These standards and architectures have enabled the nationwide introduction of significant features and functionality in response to customer demand rather than artificial regulatory intervention.

The Commission also invited comment on whether Section 22.901 of its rules, which requires RBOCs to offer cellular service only through a separate subsidiary, should be interpreted as covering PCS subscribers who roam in cellular service areas.¹⁰ Because of the likely use of dual mode handsets and cellular resale as a means of entry into the PCS marketplace, such an interpretation would result in unfair, disparate treatment of a PCS provider affiliated with the LEC, because that provider could not begin operations until its own PCS network was completely designed, build, tested and

⁹ Second NPRM, ¶ 56.

¹⁰ Second NPRM, ¶ 57.

activated. Thus, RBOC-affiliated PCS providers would be placed at a significant competitive disadvantage due solely to the nascent stage of 2 GHz equipment development and deployment. This unintended result would clearly cut against the intent of Congress to bring "all mobile service providers under a comprehensive, consistent regulatory framework ...".¹¹

III. Resale

The Commission has tentatively concluded that CMRS providers should be subject to the same obligations for resale as cellular providers unless there is a showing that permitting resale would not be "technically feasible or economically reasonable for a specific class of CMRS providers."¹² Ameritech agrees that the resale requirements imposed on cellular providers should be equally applicable to all CMRS providers that are potential competitors. There appear to be no general technical or economic issues which would preclude applying the resale requirement to all CMRS providers. The Commission should ignore blatantly self-interested pleas for special treatment, and reject GTE's argument that resale obligations should not be imposed on air-to-ground providers, as well as those raised on behalf of the SMR and paging industries.¹³ Imposing resale requirements on all CMRS providers to the same extent as they have been imposed on cellular providers is consistent with the Commission's stated goal of promoting regulatory parity.

¹¹ Second Report and Order, at 1417.

¹² Second NPRM, ¶ 83.

¹³ Second NPRM, ¶ 87.

The Commission has also concluded that, as with cellular carriers, it should impose a time limitation on a CMRS facilities-based provider's obligation to permit other CMRS facilities-based providers to resell its service.¹⁴ The Commission concluded that this would strike "an acceptable balance of new CMRS entrants' interest in reselling in order to enter the market as quickly as possible and the public interest in encouraging the aggressive development of new networks...".¹⁵

Ameritech supports a provision which would permit the CMRS provider to restrict the resale of its services to any facilities-based CMRS provider for five years after the issuance of the license to the second provider. To encourage competition in the CMRS market, the Commission should encourage providers to build their own facilities. Thus, the resale requirement should not be prolonged indefinitely.

¹⁴ Second NPRM, ¶ 90.

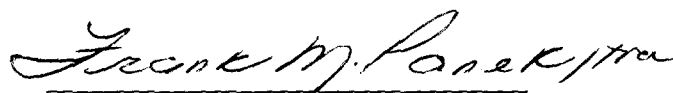
¹⁵ Ibid.

IV. Conclusion

For the reasons discussed above, Ameritech requests that the Commission:

1) continue to permit CMRS interconnection to develop through private negotiations and arrangements and not adopt guidelines prematurely; 2) not take any regulatory action with respect to roaming services; and 3) impose any resale requirements on all CMRS providers equally, to establish a level playing field.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek", written in dark ink.

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